

INOCENCIA DELUAO AND FELIPE DELUAO, PLAINTIFFS-APPELLEES, VS. NICANOR CASTEEL AND JUAN DEPRA, DEFENDANTS, NICANOR CASTEEL, DEFENDANT-APPELLANT.

G.R. No. L-21906. August 29, 1969

Ponente: CASTRO, J.

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CASTRO, J.:

Subject of this Resolution is the appellee' motion of February 8, 1969 for reconsideration of our decision of December 24, 1968. It poses several propositions which we will now discuss in seriatim.

I. The appellees initially argue that because the Fisheries Act (Act 4003) does not contain any prohibition against the transfer or sub-letting of fishponds covered by permits or lease agreements, Fisheries Administrative Order 14, sec. 7, which embodies said prohibition, is therefore a nullity because inconsistent with the Fisheries Act. They cite sec. 63.

We disagree.

Sec. 63 of Act 4003 provides:

"Permits or leases entitling the holders thereof, for a certain stated period of time not to exceed twenty years, to enter upon definite tracts of a public forest land to be devoted exclusively for fishponds purposes, or to take certain fishery products or to construct fishponds within tidal, mangrove and other swamps, ponds and stream within public forest lands or proclaimed timber lands or established forest reserves, may be issued or executed by the Secretary of Agriculture and Natural Resources, subject to the restrictions and limitations imposed by the forest laws and regulations, to such persons, associations or corporations as are qualified to utilize or take forest products under Act Number Thirty-six hundred and seventy-four. x x x" (Underscoring supplied)

It is clear from the abovequoted section of the Fisheries Act that only holders of permits or leases issued or executed by the Secretary of Agriculture and Natural Resources (hereinafter referred to as DANR Secretary) can "enter upon definite tracts of public forest land to be devoted exclusively for fishpond purposes, ... or to construct fishponds within tidal, mangrove and other swamps, ponds and streams within public forest lands or proclaimed timber lands or established forest reserves..." Inferentially, persons who do not have permits or leases properly issued or executed by the DANR Secretary cannot do any of the acts mentioned in sec. 63. Certainly, a transferee or sub-lessee of a fishpond is not a holder of a permit or lease. He cannot, therefore, lawfully "enter upon definite tracts of a public forest land to be devoted exclusively for fishpond purposes, ... or to construct fishponds within tidal, mangrove and other swamps, ponds and streams within public forest lands or proclaimed timber lands or established forest reserves. ..." No doubt, the intent of the legislature is to grant the privilege of constructing, occupying and operating fish-ponds within public land only to holders of permits and leases, and to no one else. *Inclusio unius est exclusio alterius*. And in declaring null and void a sub-lease or transfer of the whole or part of a fishpond and/or its improvements unless previously approved by the Director (Commissioner) of Fisheries, sec.

37(a) of Fish-eries Administrative Order 14 does no more than carry into effect the will of the legislature as expressed in the Fisheries Act. It is a valid administrative order issued under the authority conferred by sec. 4 of the Fisheries Act on the DANR Secretary to "issue instructions, orders, rules and regulations consistent with this Act, as may be necessary to carry into effect the provisions thereof." It is a salutary rule because issued in fulfillment of the duty of the administrative officials concerned to preserve and conserve the natural resources of the country by scrutinizing the qualifications of those who apply for permission to establish and operate fishponds of the public domain. It is a necessary consequence of the executive and administrative powers of the DANR Secretary with regard to the survey, classification, lease, sale or any other form of concession or disposition and management of lands of the public domain, and, more specially, with regard to the grant or withholding of licenses, permits, leases and contracts over portions of the public domain to be utilized as fishponds. The prohibition thus merely implements the Fisheries Act and surely can not be considered an act of legislation.

People v. Santos (63 Phil. 360) cited by the appellees has no application to the case at bar. In that case, the Supreme Court declared null and void an administrative order issued by the DANR Secretary prohibiting boats not subject to license from fish-ing within three kilometers of the shore line of American military and naval reservations without a special permit from the DANR Secretary upon recommendation of the military and naval authorities, because the Fisheries Act really does not contain such a provision. Here, sec. 63 of the Fisheries Act, under the afore-cited well-ensconced principle of "Inclusio unius est exclusio alterius," prohibits persons without permits or leases to operate fishponds of the public domain, because it allows only holders of permits or leases to construct, occupy and enjoy such fishponds.

The appellees, however, insist that the prohibition in Fish-eries Administrative Order 14, sec. 37(a), refers to fishponds covered by permits or leases, and since no permit or lease had as yet been granted to Casteel, the prohibition does not apply. Stated otherwise, their theory is that it was perfectly all right for Casteel to violate Fisheries Administrative Order 14, for, anyway, he had not yet been issued a permit or lease.

The appellees advocate a dangerous theory which invites promiscuous violation of the said administrative order. For all that a would-be permittee or lessee would do in order to escape the consequences of an unauthorized sub-lease or transfer, is to effect such sub-lease or transfer before the issuance of the lease or permit, and then argue that there is no violation because such sub-lease or transfer was effected before a permit or lease was issued. To be sure, this theory espoused by the appellees would violate the intent of the legislature to grant the privilege of occupying, possessing, developing and enjoying fishponds of the public domain only to bona fide holders of permits or lease agreements properly issued or executed by the DANR Secretary.

The appellees assail as inaccurate the statement in our decision that "after the Secretary of Agriculture and Natural Resources approved the appellant's application, he became to all intents and purposes the legal permittee of the area with the corresponding right to possess, occupy and enjoy the same," because the decisions of the Secretary allegedly did not approve the appellant's fishpond application but merely reinstated and gave due course to the same. This is not correct. The decisions of the DANR Secretary in DANR cases 353 and 353-B did not merely recognize the occupancy rights of Casteel (and, necessarily, his rights to possess and enjoy the fishpond), as admitted by the De-luaos (p. 13, motion for reconsideration), but approved his application as well. Several orders, memoranda, letters and other official communications of the DANR Secretary and other administrative officials of the DANR, found in the records of this case and in the records of the DANR (of which this Court can take judicial notice), attest to this.

The decisions in cases 353 and 353-E were ordered executed way back in August 4, 1955. (rollo, p. 179) Then in a 1st Indorsement dated July 1, 1961, the DANR ordered the Director of Fisheries to execute the said decisions,

"it appearing from the re-cords of this Office that the same had long become final and execu-tory and that there is nothing in said records to show that this Of-fice is a party-litigant in Civil Case No. 629, allegedly filed by Inocencia Deluao and Felipe Deluao against Nicanor Casteel for 'Specific Performance, etc.'" (rollo, p. 100) On October 26, 1961 the Director of Fisheries issued a memorandum to the District Fishery Officer, Davao City, in compliance with the aforemen-tioned 1st Indorsement, instructing the latter "to take immediate steps to execute the decisions of the Secretary of Agriculture and Natural Resources both dated September 15, 1950. ... " (rollo, p. 101) Next came a memorandum dated June 27, 1962 of the Direc-tor of Fisheries to the Regional Director, Fishery Regional Office No. VIII, Davao City, stating, "Your attention is again invited to the memorandum of this Office, dated October 26, 1961, wherein you were instructed to execute the decisions both dated September 15, 1950, in connection with the above-entitled cases. ... In this connection, you are hereby directed to execute the aforesaid deci-sions in the presence of the parties concerned, ..." The Director of Fisheries also sent a telegram dated July 21, 1962 to the Fish-ery Officer, Davao City, enjoining the latter to "EXECUTE DE-CISIONS BY SECRETARY AS INSTRUCTED PLACE CASTEEL IN POSSESSION AREAS OF ARADILLOS CARPIO A ND CACAM DE-POSIT REIMBURSEMENT FOR CACAM CLERK OF COURT RIGHT OF CASTEEL TO AREAS SANCTIONED BY DECISIONS ISSUANCE PERMITS WILL FOLLOW LATER." (rollo, p. 102; emphasis sup-plied)

A notice of execution dated September 11, 1962 of the Re-gional Director of the Fishery Office of Davao City, was sent to the parties in this case, requiring them "to be present in the pre-mises of the area under Fp. A. No. 1717 of Nicanor Casteel situated in Barrio Palili, Padada (formerly covered by the areas un-der F-299-C and F-539-C of Leoncio A radillos and Alejandro Cacam, respectively, and Fp. A. No. 763 of Victorio D. Carpio), on September 24, 1962 at 10 o'clock in the morning. This Office will place Nicanor Casteel in possession of the area pursuant to the instructions in the telegrams of the Director of Fisheries, da-ted July 21, 1962, and September 7, 1962, in connection with the decisions of the Honorable, the Secretary of Agriculture and Na-tural Resources in DANR Case Nos. 353 and 353-B, both dated September 15, 1950."

The appellees, however, filed on July 9, 1963 a new pro-test against the execution of the decisions with the Commissioner of Fisheries, Said protest was dismissed by the Acting Commis-sioner of Fisheries in a letter to Mrs. Inocencia Deluao dated June 1, 1964, which stated, inter alia:

"This is in connection with your claim as embodied in the protest filed by you and your hus-band, Felipe Deluao, over the area covered by Fishpond Application No. 1717 of Nicanor Casteel, located in Malalag, Padada, Davao. Please be advised that the right over the area in question was already adjudicated or awarded to Nicanor Casteel, in the Order of the Secretary of Agricul-ture and Natural Resources, dated September 15, 1950 (DANR Cases Nos. 353-E and No. 353), hence, this matter is a decided and closed case. The aforestated Order has long become final and exe-cutory. In fact, it has been partially executed. Nothing new has been raised in your instant pro-test which appears to be intended mainly to de-lay the full execution of the order or Decision of the Secretary. Your protest therefore, lacks me-rit or basis.

"It appearing therefore, that there is no-thing worth taking into consideration in your claim or protest which has not moreover, been officially docketed for failure to pay the protest fee, as re-quired by the rules and regulations, your instant protest is hereby DISMISSED; and, the matter de-finitely considered CLOSED. " (Underscoring sup-plied)

An appeal from the foregoing dismissal was taken by the appellees to the DANR Secretary who dismissed the same in a letter dated September 12, 1967, thus.

"In view of the finality of our decisions in the two afore-mentioned administrative cases (DANR Cases Nos. 353 and 353-B), execution of the same had been ordered by this Office as early as August 4, 1955, notwithstanding the injunction proceeding, because it appears that neither the Secretary of Agriculture and

Natural Resources nor the Director of Fisheries was a party thereto. However, due to several incidental requirements necessary in the implementation of said decisions, the execution thereof was delayed. In another directive of this Office to the Director of Fisheries contained in a 1st Indorsement dated July 5, 1961, this Office reiterated due execution of the said decisions. The Director of Fisheries, in turn, relayed the directive to the Fisheries Regional Director in Davao City who gave notice to Nicanor Casteel and Felipe Deluao to be present in the area in question on September 24, 1962 and that Casteel would be placed in possession thereof.

"The due execution of the decisions suffered again another delay because you filed two separate 'URGENT OMNIBUS PETITION TO DECLARE RESPONDENTS (Nicanor Casteel, Director of Fisheries and Regional Director Crispin Mondragon) IN CONTEMPT OF COURT AND TO DIRECT RESPONDENTS TO DESIST FROM PLACING RESPONDENT NICANOR CASTEEL IN POSSESSION OF THE LITIGATED PROPERTY,' The first was filed before the Court of First Instance of Davao and the other, before the Court of Appeals in Manila. However, in separate orders of the Court of Appeals dated October 12, 1962 and of the Court of First Instance of Davao dated October 24, 1962, the 'Urgent Omnibus Petition, etc.' were both denied.

"The denial by the Courts of the said urgent omnibus petitions to declare respondents in contempt of court and to direct the respondents to desist from placing Nicanor Casteel in possession of the litigated property, could be interpreted to mean that there is no legal impediment, in the execution of the decisions of this Office which had long become final and executory, and an implied approval by the Courts in the enforcement of said decisions.

"Notwithstanding all these circumstances, however, you again filed on July 9, 1963, a new protest against the execution of the aforementioned final decisions of this Office of September 15, 1950 before the Commissioner of Fisheries. A close study of your protest shows that there is no new matter raised in said protest which has not been disposed of in previous resolutions either by this Office or by the Philippine Fisheries Commission. This Office is even inclined to share the opinion of the Acting Commissioner of Fisheries that the protest apparently is a move intended to delay further the due execution of the final decisions.

"IN VIEW OF ALL THE FOREGOING, and finding the notice of appeal to be unmeritorious, the same much to our regret, cannot be favorably entertained and the same is hereby dismissed. The Commissioner of Fisheries is directed to immediately execute the decisions of this Office in the aforementioned DANR Cases Nos. 353 and 353-B upon receipt of this order, it appearing that said decisions had long become final and executory. However, in implementing the said decisions, it is necessary that Nicanor Casteel first be granted a permit, and once the corresponding permit is granted, to place him in possession of the area in question." (rollo, pp. 179-180)

Pursuant to the direction made to the Commissioner of Fisheries in the above letter-decision, the latter sent a memorandum dated May 31, 1968 to the Regional Director, Fisheries Regional Office No. VIII, Davao City, quoted in part as follows:

"For the early execution of the directive of the Secretary, you are hereby ordered to prepare the sketch plan or plans of the area or areas with respective location and technical description so that the necessary permit can be issued in favor of Mr. Casteel. This Office will have to abide with the latest decision of the Secretary, hence, your letter recommendation of January 3, 1968, will have to be set aside." (Underscoring supplied)

Again, in a letter dated September 30, 1967, the appellees moved for reconsideration of the above dismissal. This was likewise denied by the DANR Secretary in his reply to them dated December 16, 1968, holding that:

"In connection with your letter dated September 30, 1967 requesting for a reconsideration of a letter-decision of this Office dated September 12, 1967, and for the withholding of the enforcement of the aforesaid decision, please be informed that we have already considered the reasons you advanced and we see no cogent reason to

modify or reverse our stand on the matter.

* * *

"In view of the foregoing, your request for reconsideration should be, as hereby it is, denied." (see annex 1-B of appellant's answer to appellees' motion for reconsideration of decision rendered on December 24, 1968)

The overwhelming thrust of the abovesited orders, memo-randa, and letter-decisions, is that Casteel's Fp. A. 1717 had been approved by the Secretary in DANR cases 353 and 353-B and that the area covered by his application had been adjudicated and awarded to him. In fact, the said decisions had already been part-ly executed because - contrary to the appellees' allegation - Cas-teel had already complied with the order in DANR case 353-B that he reimburse to Leoncio Aradillos and Alejandro Cacam the amount of the improvements introduced by them in the area they formerly occupied (see annex A of the appellees' motion for is-suance of temporary restraining order and petition for contempt, rollo, pp. 173-180). And the only reason why the issuance of a permit to Casteel was delayed was the numerous legal maneuvers of the appellees which, in the words of both the Acting Commis-sioner of Fisheries and the DA NR Secretary, were "intended to delay" the execution of the aforesated decisions. The non-issuance of the permit due to the deliberate attempts of the appellees to fore-stall the same cannot and should not be taken against the herein appellant, because clear and unmistakable is the intention of the DANR Secretary to place him in possession of the whole fishpond in question.

Pursuing further their buckshot arguments under the first proposition, the appellees insist that the decisions in DANR cases 353 and 353-B are not binding on them because they were not par-ties to the cases. They argue that even if their second motion for reconsideration dated January 9, 1969 - which they alleged was given due course - of the letter-decision of the DANR Secretary dated September 12, 1967 were denied, the denial would merely foreclose the question of whether or not they could still intervene in DANR cases 353 and 353-B after the same have become final, but will not preclude them from asserting their interest in the fishpond through other means, such as the filing of an application over the half portion occupied by them or a protest against the is-suance of a permit to Casteel over the said half.

Nothing could be farther from the truth. The records of this case and of the cases in the DANR show the several protests, appeals, motion to intervene and motions for reconsideration of the appellees - all calculated to prevent the execution of the deci-sions in DANR cases 353 and 353-B. In the face of all these legal maneuvers, all of which had been denied validity by the Fisheries Commissioner and the DANR Secretary, how can they now assert that the said decisions do not bind them? Contrary to their repre-sentations, they are certainly precluded from filing application over the half portion occupied by them or a protest against the is-suance of a permit to Casteel over the said half. After all, the area involved in DANR cases 353 and 353-E is the total area of 178.86 hectares, more or less, covered by Casteel's Fp. A. 1717. This is clear not only from the above discussion, but from appen-dix B of the appellees' motion for reconsideration itself which is the certification of the Fisheries Commissioner stating that:

"The records further show that the area un-der Fp. A. No. 1717 is involved in administrative cases, to wit: DANR CASES 353 and 353-B, enti-tled 'Nicanor Casteel vs. Victorio D. Carpio' and 'Nicanor Casteel vs. Alejandro Cacam, et al.', respectively, which has been decided by the Sec-retary of Agriculture and Natural Resources in a letter dated September 12, 1967, in favor of Nica-nor Casteel. x x x"

It is extremely doubtful that their second motion for recon-sideration allegedly filed on January 9, 1969 was really given due course by the DANR. Appendix E cited by them which is the DANR Legal Department's reply dated February 4, 1969, merely men-tions the reference of their motion to the Department's "Action Committee" for deliberation and action. No favorable action has been taken on it to date.

II. The appellees next argue that the contract of service, exh. A, is not by itself a transfer or sub-lease but merely an agreement to divide or transfer, and that pursuant to its intended "ultimate undertaking" of dividing the fishpond into two equal parts the appellant is under obligation, conformably with the law on obligations and contracts, to execute a formal transfer and to secure official approval for the same. They allege that actual division of the fishpond was predicated on a favorable decision in the then pending DANR cases 353 and 353-B; that the pendency of the said cases served to suspend implementation of the agreement to divide; and that after the DANR Secretary ruled in Casteel's favor, the suspensive condition was fulfilled and the ultimate undertaking to divide the fishpond became a demandable obligation.

The appellees seem to have failed to grasp the rationale of our decision. We discussed at length - in the said decision and in the resolution of their first proposition above - that the contract of partnership to divide the fishpond between them after such award became illegal because it is at war with several prohibitory laws. As such, it cannot be made subject to any suspensive condition the fulfillment of which could allegedly make the ultimate undertaking therein a demandable obligation. It is an elementary rule in law that a partnership cannot be formed for an illegal purpose or one contrary to public policy and that where the object of a partnership is the prosecution of an illegal business or one which is contrary to public policy, the partnership is void. And since the contract is null and void, the appellant is not bound to execute a formal transfer of one-half of the fishpond and to secure official approval of the same.

It must be recalled that the appellees have always vehemently insisted that the "contract of service," exh. A, created a contract of co-ownership between the parties over the fishpond in question. We however refused to go along with their theory in order not to be compelled to declare the contract a complete nullity as being violative of the prohibitory laws, thus precluding the appellees from obtaining any relief. It is precisely to enable us to grant relief to the appellees that, in our decision, we assumed that the parties did not intend to violate the prohibitory laws governing the grant and operation of fishery permits.

We cannot, however, require the appellant to divide the fishpond in question with the appellees, in violation of the decisions of the DANR Secretary rendered in DANR cases 353 and 353-B way back on September 15, 1950, because that would violate the principle that purely administrative and discretionary functions may not be interfered with by the courts. We are loath to impose our judgment on the DANR Secretary on purely administrative and discretionary functions in a case where the latter is not even a party. At all events, we are persuaded that we have sufficiently protected the interests of the appellees in our decision.

III. The appellees next contend that assuming that the prohibition by mere administrative regulation against the transfer of fishpond rights without prior official approval is valid; that the said prohibition was already operative notwithstanding that no permit had as yet been issued to Casteel; and that the contract of service is already a "transfer" and not a mere agreement "to divide," the contract of service, even without prior official approval, is not a nullity because under the rulings of the Supreme Court and the DANR in analogous cases, the requisite approval may, on equitable and/or other considerations, be obtained even after the transfer.

Zamboanga Transportation Co. vs. Public Utility Commission (50 Phil. 237), cited by the appellees to buttress their stand, is not in point. In that case, this Court held that the approval of the mortgage on the property of the public utility involved, instead of being prejudicial, is convenient and beneficial to the public interest. Thus, considerations of public interest moved this Court to hold that the approval by the Public Utility Commission may be given before or after the creation of the lien. On the other hand, no real considerations of public interest obtain in this case. This is merely a controversy between two parties over a fishpond of the public domain. Besides, the subject-matter of the contract of sale or mortgage in the Zamboanga case is private property capable of private ownership. Which explains why this Court held in that case that "The approval of the Public Utility Commission

re-quired by law before the execution of a mortgage on the property of a public utility or the sale thereof, has no more effect than an authorization to mortgage or sell and does not affect the essential formalities of a contract, but its efficacy." In other words, as long as the contract to sell or mortgage a public utility's proper-ties is executed with all the intrinsic and extrinsic formalities of a contract, it is valid irrespective of the presence or absence of the approval by the Public Utility Commission. Only the efficacy of such a contract is affected by the presence or absence of the approval of the Public Utility Commission. In the case at bar, the subject-matter is a fishpond which is part of the public domain the ownership of which cannot be privately acquired. Thus, with-out the prior approval of the DANR Secretary, any contract purporting to sub-lease or transfer the rights to and/or improvements of the fishpond, is null and void.

Equally inapplicable to the case at bar is *Evangelista vs. Montaño, et al.* (93 Phil. 275). The subject-matter in that case is a homestead which is capable of private ownership, while in-volved here is a fishpond of the public domain incapable of private ownership. The provision of law involved in that case is sec. 118 of the Public Land Act (C.A. 141) which explicitly provides that the approval of the DANR Secretary to any alienation, transfer or conveyance of a homestead shall not be denied except on constitutional and legal grounds. There was no allegation in the said case that "there were, constitutional or legal impediments to the sales, and no pretense that if the sales had been submitted to the Secretary concerned they would have been disapproved. " Thus, there this Court held that "approval was a ministerial duty, to be had as a matter of course and demandable if refused." In this case, sec. 37 of Fisheries. Administrative Order 14 very clearly provides that without the approval of the DANR Secretary any sublease or transfer is null and void. It does not state that approval may be withheld only on constitutional and legal grounds, so that in the absence of said grounds, approval of the sub-lease or trans-fer becomes ministerial. In *Evangelista* this Court applied art. 1461 of the Civil Code of 1889, which provided that the vendor was bound to deliver and warrant the subject-matter of the sale, in relation to art. 1474 thereof, which held the vendor responsible to the vendee for the legal and peaceful possession of the subject-matter, of the sale. It construed the foregoing provisions as contemplating the obligation to deliver clear title, including the securing of the approval of the sales by the DANR, Secretary, and held that by force of this obligation, the plaintiff in that case, who stepped into the shoes of his grantor, cannot use the lack of approval to nullify the sales because a seller will not be allowed to take advantage of his omission or wrong. Thus, under the maxim, "Equity regards that as done which should have been done," this Court viewed the sales as though the obligations imposed upon the parties had been met, and treated the purchasers as the owners of the subject-matter of the sales, notwithstanding the defects of the conveyances or of their execution. Certainly, the factual situation in the case at bar does not warrant application of the above-quoted maxim. Here, a transfer by Casteel to Deluao of one-half of the fishpond in question without the prior approval of the DANR Secretary is legally objectionable, and no justifying reason exists for us to view the requirement of prior approval as merely direc-tory.

The appellees cite sec. 33, sub-sec. (4) of Fisheries Administrative Order 14, which states,

"If a permittee transfers his/her right to any area or land improvements he introduced thereon, the transferee may secure a permit by filing the pro-per application and paying the necessary fee, rental and bond deposit. The rental may be as provided in sections 16 and 20 hereof,"

and argue that the said administrative order evinces in its other provisions an intention not to give the prohibition in sec. 37 an absolute and inflexible effect, because no reference is made to the prohibition in section 37 as qualificatory. This is typical of the appellees' clutching-at-straws reasoning. There is obviously no need to mention the prohibition in section 37 as qualificatory be-cause the prefatory sentence of sec. 33 provides that "Every permit or lease shall be governed by the provisions of this Administrative Order," among which is sec. 37 thereof. Besides, if the appellees should see any conflict between sec. 33, subsection (r)(4) and sec. 37(a) - although there is clearly none to be found -then, following the rules of statutory construction, sec. 37(a), the latter

provision, should prevail.

The appellees' argument that the prohibition itself is self-emasculating because while stipulating in its first sentence that any unapproved transfer or sub-lease shall be null and void, it states in the second sentence that "a transfer not previously approved or reported shall be considered sufficient cause for the cancellation of the permit....," thereby implying that a mere "report" of the transfer, even without approval thereof, may suffice to preserve existing rights of the parties - is now rendered academic by Revised Fisheries Administrative Order 60, effective June 29, 1960, which repealed Fisheries Administrative Order 14 and its amendments. Thus, sec. 32 of Fisheries Administrative Order No. 60 provides that:

"A transfer or sub-lease of the rights to, and/or improvements in, the area covered by permit or lease may be allowed, subject to the following conditions:

* * *

"(d) That any transfer or sub-lease without the previous approval of the Secretary shall be considered null and void and deemed sufficient cause for the cancellation of the permit or lease, and the forfeiture of the improvements and the bond deposited in connection therewith, in favor of the Government. "

Note that there is no mention whatsoever of the word report and that it is the DANR Secretary's approval which must be secured. A mere report, therefore, of the transfer is not sufficient. In fact, although the Bureau of Fisheries was fully informed of the contract of partnership between the parties to divide the fishpond, still, the said Bureau did not grant the reliefs prayed for by the appellees in their numerous protests, motions for reconsideration and appeals. The numerous reports made by the appellees to the Bureau of Fisheries were therefore disregarded.

Finally, the appellees cite the case of Amado Lacuesta vs. Roberto Doromal, etc. (DANR case 3270) in which the DANR Secretary has allegedly interpreted the prohibition found in sec. 37(a) of Fisheries Administrative Order 14 as not absolute so that the approval required may yet legally be obtained even after the transfer of a permit.

It would not serve the cause of interdepartmental courtesy were we to review or comment on the decision of the DANR Secretary in the said case. But even at that, the factual situation in Lacuesta shows that there was sufficient justification for the DANR Secretary to divide the fishpond between the parties, which does not obtain in this case.

In Lacuesta the verbal agreement to divide the fishpond was entered into even before the fishpond application was filed. The parties there helped each other in securing the approval of the application. The DANR Secretary found for a fact that the appellee in the said case would not have succeeded in securing the approval of his fishpond application, coupled with the issuance of the permit, were it not for the indispensable aid both material and otherwise extended by the appellant spouses. Thus, the appellant spouses paid the filing fee for the application, the bond premiums and the surveying fees. They asked the assistance of their congressman who facilitated the release of the permit. They paid the rentals for the fishpond for several years. In fact, the permit was even cancelled - although later reinstated - because of the appellee's failure to pay rentals. In the face of the foregoing facts, the DANR Secretary could not simply ignore the equitable rights of the appellants over one-half of the fishpond in question.

In this case, Casteel was the original occupant and applicant since before the last World War. He wanted to preclude subsequent applicants from entering and spreading themselves within the area applied for by him, by expanding his occupation thereof by the construction of dikes and the cultivation of marketable fishes. Thus, he borrowed money from the Deluaos to finance needed improvements for the fishpond, and was compelled by force

of this circumstance to enter into the contract of partnership to di-vide the fishpond after the award (see letter dated November 15, 1949 of Casteel to Felipe Deluao quoted inter alia on page 4 of our Decision). This, however, was all that the appellee spouses did. The appellant single handedly opposed rival applicants who occupied portions of the fishpond area, and relentlessly pursued his claim to the said area up to the Office of the DANR Secretary, until it was finally awarded to him. There is here neither allegation nor proof that, without the financial aid given by the Deluaos in the amount of P27,000, the area would not have been awarded or adjudicated to Casteel. This explains, perhaps, why the DANR Secretary did not find it equitable to award one-half of the fishpond to the appellee spouses despite their many appeals and mo-tions for reconsideration.

IV. The appellees submit as their fourth proposition that there being no prohibition against joint applicants for a fishpond permit, the fact that Casteel and Deluao agreed to acquire the fishpond in question in the name of Casteel alone resulted in a trust by operation of law (citing art. 1452, Civil Code) in favor of the appellees as regards their one-half interest.

A trust is the right, enforceable in equity, to the benefi-cial enjoyment of property the legal title to which is in another (*Ulmer v. Fulton*, 97 ALR 1170, 129 Ohio St 323, 195 NE 557). However, since we held as illegal the second part of the contract of partnership between the parties to divide the fishpond between them after the award, a fortiori, no rights or obligations could have arisen therefrom. Inescapably, no trust could have resulted because trust is founded on equity and can never result from an act violative of the law. Art. 1452 of the Civil Code does not sup-port the appellees' stand because it contemplates an agreement between two or more persons to purchase property - capable of private ownership - the legal title of which is to be taken in the name of one of them for the benefit of all in the case at bar, the parties did not agree to purchase the fishpond, and even if they did, such is prohibited by law, a fishpond of the public domain not being susceptible of private ownership. The foregoing is also one reason why *Gauiran vs. Sahagun* (93 Phil. 227) is inapplicable to the case at bar. The subject-matter in the said case is a home-stead which, unlike a fishpond of the public domain the title to which remains in the Government, is capable of being privately owned. It is also noteworthy that in the said case, the Bureau of Lands was not apprised of the joint tenancy between the parties and of their agreement to divide the homestead between them, lead-ing this Court to state the possibility of nullification of said agree-ment if the Director of Lands finds out that material facts set out in the application were not true, such as the statement in the ap-plication that it "is made for the exclusive benefit of the applicant and not, either directly or indirectly, for the benefit of any other person or persons, corporations, associations or partnerships." In the case at bar, despite the presumed knowledge acquired by DANR administrative officials of the partnership to divide the fish-pond between the parties, due largely to the reports made by the Deluaos the latter's numerous appeals, motion for intervention and motions for reconsideration of the DANR Secretary's deci-sions in DANR cases 353 and 353-B, were all disregarded and denied.

V. The appellees insist that the parties' intention "to di-vide" the fishpond remained unchanged; that the change in inten-tion referred solely to joint administration before the actual divi-sion of the fishpond; and that what can be held as having been dis-solved by the "will" of the parties is merely the partnership to exploit the fishpond pending the award but not the partnership to divide the fishpond after such award. In support of their argument, they cite Casteel's letters of December 27, 1950 and January 4, 1951 which allegedly merely signified the latter's desire to put an end to the joint administration, but to which the Deluaos demurred.

Even admitting arguendo that Casteel's desire to terminate the contract of partnership - as allegedly expressed in his afore-cited letters - is equivocal in that it contemplated the termination merely of the joint administration over the fishpond, the resolu-tion of the Deluaos to terminate the same partnership is unequivocal. Thus, in his letter of December 29, 1950 to Casteel, Felipe Deluao expressed his disagreement to the division (not joint

admi-nistration) of the fishpond, because he stated inter alia that:

"As regards your proposition to divide the fishpond into two among ourselves, I believe it does not find any appropriate grounds by now. x x x

"Be informed that the conflicts over the fishpond at Balasinon which you proposed to divide, has not as yet been finally extinguished by the competent agency of the government which shall have the last say on the matter. Pending the final resolution of the case over said area, your proposition is out of order." (Underscoring supplied)

It must be observed that, despite the decisions of the DANR Sec-retary in DANR cases 353 and 353-B awarding the area to Cas-teel, and despite the latter's proposal that they divide the fishpond between them, the Deluaos unequivocally expressed in their aforequoted letter their decision not to share the fishpond with Casteel. This produced the dissolution of the entire contract of partnership (to jointly administer and to divide the fishpond after the award) between the parties, not to mention its automatic dissolution for being contrary to law.

VI. Since we have shown in the immediately preceding dis-cussion that - even if we consider Casteel's decision to terminate the contract of partnership to divide the fishpond as equivocal -the determination of the Deluaos to terminate said partnership is unequivocal, then the appellees' sixth proposition that Casteel is liable to the Deluaos for one-half of the fishpond or the actual va-lue thereof, does not merit any consideration. The appellees, af-ter all, also caused the dissolution of the partnership.

Parenthetically, the appellees' statement that the benefi-cial right over the fishpond in question is the "specific partner-ship property" contemplated by art. 1811 of the Civil Code, is in-correct. A reading of the said provision will show that what is meant is tangible property, such as a car, truck or a piece of land, but not an intangible thing such as the beneficial right to a fishpond. If what the appellees have in mind is the fishpond itself, they are grossly in error. A fishpond of the public domain can never be considered a specific partnership property because only its use and enjoyment - never its title or ownership - is granted to specific private persons.

VII. The appellees' final proposition that only by giving effect to the confirmed intention of the parties may the cause of equity and justice be served, is sufficiently answered by our dis-cussion and resolution of their first six propositions. However, in answer to the focal issue they present, we must state that since the contract of service, exh. A, is contrary to law and therefore null and void, it is not and can never be considered as the law bet-ween the parties.

ACCORDINGLY, the appellees' February 8, 1969 motion for reconsideration is denied.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Fernando and Capistrano, JJ., concur.

Reyes, J., on official leave.

Teehankee and Barredo, JJ., did not take part.

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